

# **REPORT OF THE CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) NPDES RULE WORKGROUP**

**December 2003**

## **CAFO NPDES Workgroup**

On April 17, 2003, IDEM convened a workgroup of members of the agricultural, academic, environmental, state/federal government to assist in the development of a NPDES General Permit rule for Concentrated Animal Feeding Operations (CAFO). The workgroup met on nine (9) occasions and discussed and evaluated various draft versions of a NPDES General Permit rule for CAFOs. The workgroup discussions were successful in shaping a sound rule to present to the Water Pollution Control Board and in greatly narrowing differences between all parties, including the U.S. Environmental Protection Agency.

## **CAFO NPDES Workgroup Record**

IDEM has developed a Workgroup Record that contains:

- A list of workgroup members and interested persons
- First Notice of Rulemaking
- Second Notice of Rulemaking
- Transcript of Water Pollution Control Board public hearing for preliminary adoption
- Preliminarily Adopted Rule
- Third Notice of Rulemaking
- May 8, 2003, NPDES CAFO Emergency Rule Adopted by the Water Pollution Control Board
- August 7, 2003, NPDES CAFO Emergency Rule Adopted by the Water Pollution Control Board
- November 7, 2003 NPDES CAFO Emergency Rule Adopted by the Water Pollution Control Board
- Cover Memo and Draft Rule Version for the following Workgroup meetings:
  - April 17, 2003
  - June 4, 2003
  - July 1, 2003
  - July 25, 2003
  - August 22, 2003
  - October 2, 2003
  - October 10, 2003
  - November 7, 2003
  - December 8, 2003
- Copies of informal written comments on matters or rule versions discussed at workgroup meetings, including comments from the U.S. Environmental Protection Agency.

Copies of the Workgroup Record will be provided to each member of the Water Pollution Control Board and are available upon request.

## **Federal NPDES Requirements for CAFO**

The U.S. EPA promulgated a new regulation requiring NPDES permits for CAFOs on February 12, 2003. (See [cfpub.epa.gov/npdes/afo/cafofinalrule.cfm](http://cfpub.epa.gov/npdes/afo/cafofinalrule.cfm)) In September of 2002, the U.S. District Court for Southern Indiana issued an Order requiring that Indiana require NPDES permits for CAFOs.

## **NPDES General Permit Rulemaking for CAFOs**

A first notice of rulemaking was published in the March 1, 2001 Indiana Register (24 IR 1976) in anticipation of a possible federal requirement for CAFOs to obtain NPDES permits.

The second notice of comment period and notice of first hearing was published in the February 1, 2003 Indiana Register (26 IR 1737) and a preliminary adoption hearing was held on May 8, 2003. The Water Pollution Control Board preliminarily adopted the NPDES General Permit Rule for CAFOs on May 8, 2003.

The preliminarily adopted rule and a notice of third comment period was published in the August 1, 2003 Indiana Register (26 IR 3690).

The final adoption hearing notice was published in the January 1, 2004 Indiana Register. The hearing is scheduled for January 14, 2004.

## **Emergency Rule**

On May 8, 2003, the Water Pollution Control Board adopted an emergency rule to establish a general permit rule for CAFOs. All parties agreed that the workgroup should continue to meet and work to establish a final rule. This emergency rule was readopted on August 7, 2003 and again on November 6, 2003.

## **Status of Existing Operations**

On April 22, 2003, IDEM notified 529 operations that they may be required to obtain a federal NPDES permit, a second notice was sent on July 24, 2003, to those operations that had not replied to the first notice. As of December 8, 2003, IDEM has received the following responses:

- 4 farms have closed;
- 20 farms have applied for an individual NPDES permit;
- 195 farms have submitted a Notice of Intent for a General NPDES permit;
- 175 farms have submitted a certification that they are exempt from the initial filing date because they were not defined as a CAFO prior to April 24, 2003;
- 66 farms have notified that they have reduced the number of animals below the CAFO threshold;
- 10 farms that are medium CAFOs are disputing that they had a discharge that would make them a CAFO; and
- 59 farms have not responded to our mailing.

## **Workgroup Discussions**

The CAFO NPDES Workgroup met on:  
April 17, 2003

June 4<sup>th</sup>, 2003  
July 1<sup>st</sup>, 2003  
July 25<sup>th</sup>, 2003  
August, 22<sup>nd</sup>, 2003  
October 2<sup>nd</sup>, 2003  
October 10<sup>th</sup>, 2003  
November 7, 2003  
December 5, 2003.

The version of the rule to be provided to the Water Pollution Control Board reflects substantial input from all participating members of the Workgroup. A discussion of each section of the rule follows:

### **327 IAC 5-4-3: Concentrated animal feeding operations**

This section of the rule outlines the authorities and requirements for individual NPDES permits for CAFOs and contains appropriate definitions. The workgroup input was primarily focused on revising language to clarify definitions. Final workgroup discussions did not identify any major areas of concern in this section, other than the contents of a Notice of Intent, which is covered below in 327 IAC 15-15-5.

### **327 IAC 5-4-3.1: No potential to discharge determinations**

This section of the rule provides an opportunity for a CAFO to make a demonstration that their operation does not have any potential to have a discharge and should therefore not be subject to the provisions of the rule. Some revisions were made for the purpose of clarification of language and to address U.S. EPA comments. Final workgroup discussions did not identify any major areas of concern in this section.

### **327 IAC 15-15-1: Purpose and Effect**

This section outlines the basic purpose of the rule. Workgroup discussions resulted in clarification of language. Final workgroup discussions did not identify any major areas of concern in this section.

### **327 IAC 15-15-2: Applicability and Permit Boundary**

This section describes the relationship between individual and general permits and exempts a CAFO holding either type of permit from having to renew a Confined Feeding Operation (CFO) Approval under 327 IAC 16. Workgroup discussions led to clarifying language but there were no significant differences of opinion identified on the revised contents of this section.

### **327 IAC 15-15-3: Definitions**

Workgroup discussions led to the addition of some new definitions and some revisions to clarify existing definitions. The final workgroup discussions did not identify any significant differences of opinion on the revised contents of this section.

### **327 IAC 15-15-4: Performance Standards and Effluent Limitations**

This section is made up primarily of requirements from EPA's CAFO regulations. Workgroup discussions led to some revisions to clarify language but there were no

significant differences of opinion identified in the final workgroup discussions on the revised contents of this section.

### **327 IAC 15-15-5: Notice of intent requirements**

The workgroup discussed the content of a CAFO General Permit rule Notice of Intent extensively. All required elements for an NPDES Notice of Intent for a general permit are now included in the rule. In addition, the rule contains a number of additional items that are not required by federal rule but reflect compromises or suggestions from individual workgroup members. Non-federally required items include a list of all discharges to waters over the past five years, a list of names and addresses of adjoining property owners for new CAFOs and a list of other states that owners or operators of Indiana CAFOs may operate CAFOs in. Some suggested items were not included in the final rule, such as watershed ID#s for land application areas, setback distances if different than rule requirements, a list of enforcement actions in other states etc. Although most suggestions had some merit, a consensus from all parties did not exist and these items were considered by IDEM to be above and beyond the federal CAFO permit regulations and were not necessary for successful implementation of the CAFO NPDES program.

### **327 IAC 15-15-6: Duration and renewal of coverage**

The workgroup discussed various options for initiation of coverage upon submittal of an NOI. The recommended final rule specifies that coverage under NPDES begins upon receipt of the NOI. This section also indicates that any person can petition the department to require an individual permit for a particular operation. A provision requested by citizen group representatives was added to ensure that the department responds to any such petition within 90 days. The final workgroup discussions did not identify any significant concerns with this section.

### **327 IAC 15-15-7: Construction notice of intent requirements**

This section requires that a new facility proposing to construct, or an existing facility that is expanding such that it would be required to submit an application for approval under the CFO rule, must provide with the NOI the design and construction information required under the CFO rule. The farm may not begin construction until IDEM provides notification that the NOI is complete. This revised approach for department response to a proposal to construct a new operation is intended to provide an alternative to the procedure in the CFO rule and the approach provided in SEA 533 from the 2003 legislative session. The final workgroup discussions did not identify any significant concerns with this section.

### **327 IAC 15-15-8: Public Notice**

The workgroup discussed the public notice provisions of the rule extensively. Some advocated no public notice for existing CAFOs and others advocated notice to all adjoining landowners and newspaper notice for all NOIs. There were variations offered in between as well.

The workgroup agreed that a new CAFO must submit a notice to adjoining property owners and county commissioners that they are submitting an application for a

facility at a location where one did not previously exist. Also, there is not significant disagreement with the final recommended rule's provision for newspaper notice for all NOIs, except for renewal NOIs (and modifications to existing CAFOs that involve an increase in manure storage capacity of less than 25%). For renewals, the final recommended rule provides an option for either the CAFO to notify adjoining landowners and provide certification of their notification to IDEM or for IDEM to publish annually a newspaper notice in each county in which a CAFO has submitted a renewal NOI in the preceding year. The final recommended rule contains the language that should be contained in the newspaper notice. Although this language may not be supported by all workgroup members, it reflects a general agreement by many participants as a compromise on the public notice for renewal discussions.

### **327 IAC 15-15-9: General Conditions**

This section of the rule specifies general conditions that must apply to all individual permits. This section also lists out the circumstances under which the department may require an individual permit. The workgroup had considerable discussion about the conditions for requiring an individual permit. 327 IAC 15-15-9 (7), (9), (10), (11), and (12) have all been added to identify obvious situations in which an individual permit may be more appropriate. Although other suggested conditions were advocated at various points in the discussions, the final workgroup discussions did not identify any significant disagreements with the final recommended language.

This section of the rule requires that CAFOs submit an annual report to IDEM. It was suggested that the annual report submitted to IDEM should include an identification of which specific farm fields were utilized for land application during the previous year and in what drainage basin they are located. This information is maintained at the facility and is subject to inspection by IDEM. The proposed rule does not include this provision because it is not required in the federal regulation and is not a critical element to the general permit requirements.

### **327 IAC 15-15-10: Manure, Litter and Process Wastewater Storage and Staging Requirements**

Requirements in this section are primarily taken from the existing CFO rule. The workgroup discussions led to some revisions of the language. The final workgroup discussions did not identify any significant areas of concern.

### **327 IAC 15-15-11: Soil Conservation Practice Plan**

This section of the rule codifies the U.S. EPA's regulation requirements through the development of a soil conservation plan. The NRCS raised concerns that the rule does not require the development of a Soil Conservation Practice Plan for fields that are not under the direct control of the CAFO (e.g. land utilized through an access agreement) provided the application is conducted in accordance with other provisions in the rule. While the other provisions do not directly require the implementation of erosion control provisions they do have some consideration for this concern. For example, application to highly erodible land does require either the use of a soil conservation practice plan or adequate crop cover to reduce erosion. The final recommended rule was not revised further to address this concern.

**327 IAC 15-15-12: Nutrient Management Requirements**

Requirements in this section are primarily taken from the existing CFO rule. The workgroup discussions led to some revisions in order to clarify the language. The final workgroup discussions did not identify any significant concerns with the language.

**327 IAC 15-15-13: Spray Irrigation**

Requirements in this section are primarily taken from the existing CFO rule. The workgroup discussions led to some revisions in order to clarify the language. The final workgroup discussions did not identify any significant concerns with the language.

**327 IAC 15-15-14: Land Application on Snow Covered or Frozen Ground**

Requirements in this section are primarily taken from the existing CFO rule. The workgroup discussions led to some revisions in order to clarify the language. The final workgroup discussions did not identify any significant concerns with the language. Further discussion with the U.S. EPA may be necessary to demonstrate that this rule is compliant with the federal regulation.

**327 IAC 15-15-15: Marketing Requirements**

Requirements in this section are primarily taken from the existing CFO rule. The workgroup discussions led to some revisions in order to clarify the language. The final workgroup discussions did not identify any significant concerns with the language.

**327 IAC 15-15-16 Emergency Spill Response Plan**

Requirements in this section are primarily taken from the existing CFO rule. The workgroup discussions led to some revisions in order to clarify the language. The final workgroup discussions did not identify any significant concerns with the language.

**327 IAC 15-15-17: Operating Record**

Requirements in this section are primarily taken from the existing CFO rule. The workgroup discussions led to some revisions in order to clarify the language. The final workgroup discussions did not identify any significant concerns with the language.

**327 IAC 15-15-18: Storm Water Pollution Prevention Plan**

This section was added to eliminate the necessity for CAFOs to obtain a separate storm water permit. The workgroup discussions led to some revisions in order to clarify the language. The final workgroup discussions did not identify any significant concerns with the language.

**327 IAC 15-15-19: Closure of manure, litter, and process wastewater storage**

Requirements in this section are primarily taken from the existing CFO rule. The workgroup discussions led to some revisions in order to clarify the language. The final workgroup discussions did not identify any significant concerns with the language.

**327 IAC 15-15-20: Removal from the permitting program**

Requirements in this section are primarily taken from the existing CFO rule. The workgroup discussions led to some revisions in order to clarify the language. The final workgroup discussions did not identify any significant concerns with the language.

**Conclusion**

IDEM recommends that the Water Pollution Control Board final adopt the recommended final rule.

IDEM appreciates the participation by all workgroup members and their extensive efforts to assist in the development of this rule. The final product reflects input from many participants. IDEM believes that most workgroup members support final adoption of the final recommended rule.

12/15/03